IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

First Appeal No. 314/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : December 6, 2006

Heard Mr. A. Sambre, Advocate for the appellant and Mr. P.P. Kothari, Advocate for the respondent. Admit. By consent heard forthwith.

2. This appeal is directed against judgment and order dated 9.8.2005 passed by Additional District Judge, Bhandara in MJC No. 35/2003 dismissing the application filed by the appellant under Section 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as "the Act") for custody of her minor children, Ranjit aged 9 years and Akash aged 6 years and allowing counter claim of the respondent seeking guardianship of the minor children of the appellant.

3. The appellant filed an application

under Section 25 of the Act seeking custody of above named minor children on the ground that they were forcibly taken from her custody on 21.5.2001 by the respondent who is the paternal uncle of the minor children. In the said application, the respondent filed counter claim seeking declaration that he be appointed guardian of the minor children. Before the trial Court, the appellant examined himself and the respondent examined five witnesses including himself. The trial Court, upon appreciation of the evidence led by the parties dismissed the application filed by the appellant and granted counter claim. The trial Court held that after the death of Tarachand the husband of the appellant on 10.2.2001 the appellant was living with one Gulab Rakhade with whom she got married and deserted her minor children. The trial Court disbelieved the story put forth by the appellant that the minor children were forcibly taken by the respondent. The trial Court recorded the finding that the appellant

had not only deserted the minor children but she had ill-treated the children during the short time during which they were with the appellant, after the death of her husband. The trial Court also recorded the finding that the appellant had married Gulab Rakhade which was proved by the evidence of witness Natthu Rakhade who was the priest at the time of solemnization of marriage. The trial Court also interviewed the minor children who categorically stated that they were ill-treated by their mother and they were not ready to stay with their mother. Relying upon the evidence as well as oral interview with the minor children, the trial Court rejected the application of the appellant and granted the counter claim of the respondent thereby appointing the respondent as guardian of the minor children of the appellant.

4. Mr. Sambre, learned counsel appearing for the appellant submitted that the finding given by the trial Court that the appellant had married Gulab Rakhade and

that she had ill-treated her children is totally contrary to the evidence on record and as such perverse.

5. Per contra, Mr. Kothari, learned counsel for the respondent submitted that the evidence led by the respondent clearly establishes that soon after death of Tarachand the appellant had not only deserted her minor children but also ill-treated them. He further submitted that the respondent having proved that the appellant had married Gulab Rakhade after deserting her children the appellant is clearly dis-entitled to be appointed as guardian of her minor children and the respondent who is paternal uncle of the children has rightly been appointed as their guardian.

6. In the light of the submissions made by learned counsel for the parties, and findings given by the trial Court, the following point arises for consideration in the present appeal:-

Whether the impugned order dismissing the application filed by the

appellant for custody of minor children and appointing the respondent guardian of the minor children deserves to be set aside?

7. I have given anxious consideration to the submissions made by learned counsel for the parties. I have perused the evidence led by the parties and the impugned judgment.

8. Upon close scrutiny of the evidence led by the parties, I am satisfied that the trial Court was absolutely justified in appointing the respondent as guardian of the minor children of the appellant. The evidence on record clearly establishes that after death of Tarachand, the appellant lived for some time with Gulab Rakhade before getting married with him and during this time she ill-treated her children. The evidence on record also establishes that the appellant not only ill-treated her children but also deserted them probably because she wanted to be in the exclusive company of Gulab Rakhade. This conduct on the part of the appellant is absolutely reprehensible

and, therefore, the trial Court was absolutely justified in dismissing the application for custody of her children. Moreover, it is also pertinent to note that the Judge of the trial Court had interviewed the children who had categorically stated that they were ill-treated by mother and they did not want to live with their mother. That being the position, the question of granting custody of the children to the appellant does not arise at all. In my opinion, the trial Court was absolutely justified in passing the impugned order dismissing the application filed by the appellant and granting counter claim filed by the respondent.

9. For the reasons aforesaid, I do not find any merit in the appeal. The appeal is, therefore, dismissed with no order as to costs.

JUDGE

A.